

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 21.08.2020

Pronounced on:
25.08.2020

CORAM:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN
C.M.A.No.681 of 2015

R.Jayakumar

..Appellant/Claimant

/versus/

1.M/s Surya Travels,
F-14, Spencer Plaza, 1st Floor,
No.769, Anna Salai, Chennai-2.
(Was set exparte in the trial Court)
Notice may be dispensed with.

2.Universal Sampo General Insurance Co.Ltd.,
Capitale Towers, 5th Floor,
B Wing, 554-555, Anna Salai,
Teynampet, Chennai 18. .. Respondents/Respondents

Prayer: Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 03.11.2014 made in MACT O.P.No.273 of 2012 on the file of the II Judge, Motor Accidents Claims Tribunal (Court of Small Causes), Chennai.

For Appellant :Mr.K.Suryanarayanan for
Mr.T.Senthil Velmurugan

For R2 :Mrs.R.Vijaya Kamala
R1-Exparte

J U D G M E N T

(The case has been heard through video conference)

This is a claimant appeal under the Motor Vehicles Act, 1988 for enhancement of compensation.

2.The claimant while riding his motorcycle along with one Elumalai as pillion and proceeding from Tirukazhukundram to Echur on the Mahabalipuram Road, near Echur Forest, the car bearing registration No. TN 01 AC 0056 proceeding towards

Thirukazhukundram driven rash and negligently, dashed against the claimant causing him severe injuries on his head and leg. The pillion rider Elumalai died. The claimant was taken to the Govt. General Hospital, Chennai and treated as inpatient for 25 days. He took the follow up treatment at SRM Hospital. For his left leg fracture plates and screw were fixed and later removed. Due to the injuries he is unable to carry on his normal work. His earning capacity as agriculturist and sculptor has reduced. He has to depend on others even for basic needs. Hence, sought for six lakhs compensation against the owner of the offending car and its insurer.

3.The claim was resisted by the insurance company on the ground that the claimant sustained only bruise, the claimant had no valid driving license. He has no proof for his income. Therefore, the claim is excessive.

4.The Tribunal, on considering the evidence of the doctor (PW-2) who has assessed the injury and the relevant documents like X-rays, Accident Register and Wound certificate, which were marked as claimants exhibits and the disability certificate (Ex.P-11), fixed the disability at 45% and awarded Rs.2000/- per percentage of disability for loss of income and awarded a sum of Rs.1,77,000/- which includes compensation under other non conventional heads.

5.Not satisfied with the award amount, the appeal is filed stating that, the Tribunal taking note of the injury ought to have applied multiplier as laid in Rajkumar-vs-Ajay Kumar case. The award under pain and suffering is not adequate. The percentage of disability fixed by the Tribunal is very low. The disability certificate Ex.P-11 indicates 50% and movement restricted to 30 degrees. Active standing and walking not possible. Hence, for loss of earning capacity and loss of amenities, he must be compensated adequately.

6. Per contra, the learned counsel appearing for the respondent insurance company submitted that the claimant has not produced any document to show he sustained permanent disability to apply the multiplier. He sustained only bruise and temporary disability due to his left leg fracture. After treatment, the fracture got united. The disability certificate is issued by a doctor who did not treat the claimant. Accident register and the wound certificate does not disclose any major injury to the claimant. Therefore, the award need not be interfered.

7. The records from the Tribunal was called for perusal.

8. The Accident Report issued by the Government General Hospital, Chennai where he was first treated noticed open fracture of left leg besides abrasions and contusion all over his bodies. He was inpatient from 10/12/2011 to 04/01/2012 and got discharged at request. It appears he got further treatment in the private hospital thereafter. The claimant had marked the patient bills and X ray reports of the claimant issued by SRM Medical College Hospital and Research Centre. The X ray reports are marked as Ex.P-5. The first X ray report dated 16/02/2012 also indicate both tibia and fibula fracture with external fixation (L). The second X ray report dated 21/02/2012 also indicate both tibia and fibula fracture with external fixation (L). The medical bills produced by the claimants indicate that he had been again admitted in the hospital for the implant removal on 15/03/2012. The disability certificate Ex.P-11 issued by PW-2 shows that apart from the fracture injury the claimant has also sustained head injury on the left side of the frontal region of the skull which was treated conservatively.

9. The Tribunal on considering all the above aspects has fixed the disability at 45% and awarded Rs.90,000/- for the disability. Under the other heads Rs.87,000/- has been awarded taking into account his monthly income at Rs.6000/- and loss of income for two months.

10. The learned counsel claims that the disability has permanently impaired the earning capacity of the claimant, who is an agriculturist and a sculptor. His loss of earning capacity has to be assessed by multiplier given under Schedule II of the Act. Whereas, the learned counsel for the insurer submitted that there is no evidence for permanent disability. The nature of injury does not warrant application of multiplier.

11. The FIR in this case was given the next day by one Vadivel brother of Elumalai the pillion rider who died in this accident. In the cross examination, the claimant concedes that he has no document to show he is a sculptor. He is not a member of sculptor association. The doctor who has given the disability certificate has not given the working sheet. He admits he did not treat the claimant. On seeing the X ray, he has given the percentage of disability. PW-1, also in his deposition, has not said he has lost his earning capacity permanently due to the

accident. Therefore, the submission of the claimant counsel that the loss of earning should be arrived applying multiplier is not sustainable, when there is no proof that the injuries have not caused permanent disability or permanent disability to his functional capacity.

12.At the same time, as pointed out earlier, the claimant had suffered the injuries and was taking treatment for nearly 3 months. (from 10/12/2011 to 15/03/2012) out of which, he had been an inpatient at Govt Hospital at Chennai for 25 days and few days in SRM Hospital. The claimant has deposed before the tribunal that the plates and screws implanted are not removed so far. Therefore, this Court is of the view that the claimant has to be paid a fair and just compensation under the head loss of income and other non-conventional heads like pain and suffering and loss of amenities.

13.The award of the tribunal is modified and enhanced as below:-

Loss of income during the period of treatment: $6,000 \times 4 =$	Rs.24,000
Transportation	Rs.10,000
Extra nourishment	Rs.10,000
Damage to clothes	Rs. 1,000
Medical expenses	Rs.20,000
Attender charges	Rs. 6,500
Loss of amenities	Rs.15,000
Pain and sufferings, mental agony	Rs.30,000
Disability 45 % x Rs.2000	Rs.90,000
Total	Rs.2,06,500/-

The respondent insurance company is directed to deposit the award amount with interest at the rate of 7.5% from the date of petition (02/01/2012) till the date of deposit. On such deposit, the claimant is permitted to withdraw the same on filing appropriate petition before the Tribunal.

14. Accordingly, this Civil Miscellaneous Appeal is partly allowed with costs.

-s/d-
Assistant Registrar

True Copy
Sub-Assistant Registrar

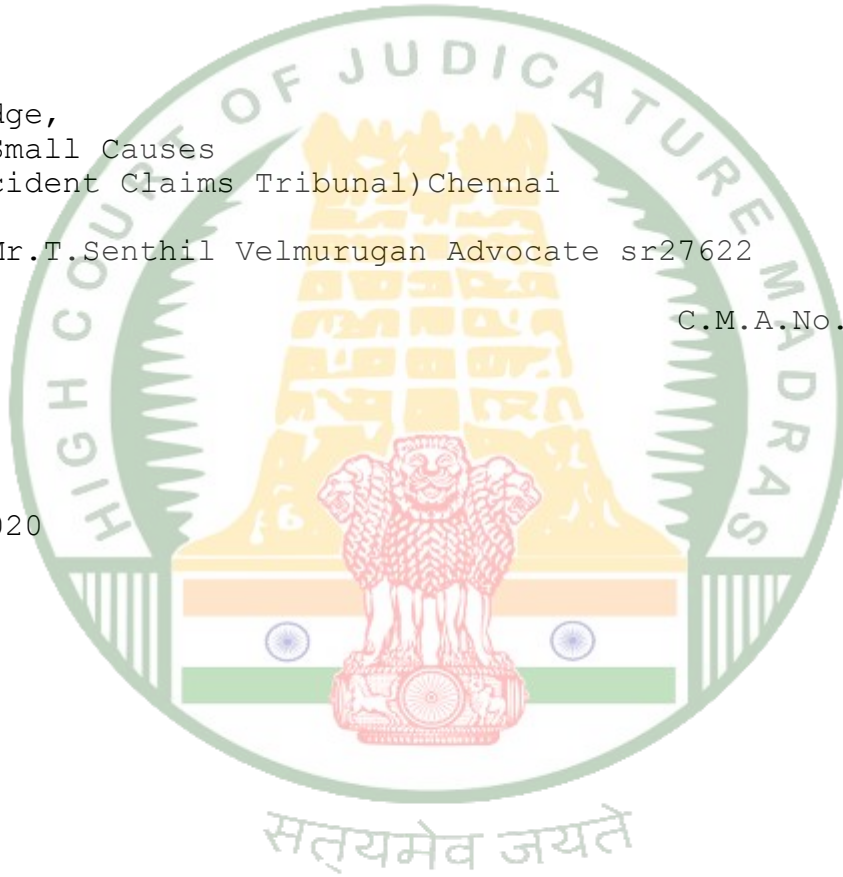
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To:

The II Judge,
Court of Small Causes
(Motor Accident Claims Tribunal) Chennai

+1 cc to Mr.T.Senthil Velmurugan Advocate sr27622

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